United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

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By mail

UNITED STATES COURT OF APPEALS

For the Second Circuit

Nos. 74-2160
74-2320

UNITED STATES OF AMERICA

Appellee

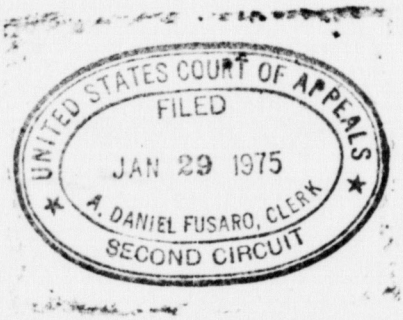
vs.

ANTHONY THOMAS CAMPANILE
and
WILLIAM MONKS

Appellants

APPENDIX OF APPELLANTS

Appeal From The United States District Court
For The District of Vermont
Criminal No. 7358



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147 Main Street
Burlington, Vermont

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Burlington, Vermont

Attorneys for Appellants

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PAGINATION AS IN ORIGINAL COPY

RELEVANT DOCKET ENTRIES

1973	
Sept. 26	Filed Indictment in violation of Sections 2113(b) and 2, Title 18, United States Code.
Sept. 26	Filed Record of Grand Jurors concurring.
Sept. 27	Issued Warrant of Arrest of Defendant Monks.
Sept. 27	In open Court before Judge Coffrin, Defendant Campanile in Court without counsel for arraingment. Carter LaPrade, Esq. for Government.
Sept. 27	Filed Financial Affidavit as to Defendant Campanile.
Sept. 27	Defendant waives reading of Indictment and Court enters a plea of not guilty for Defendant Campanile.
Sept. 27	Mr. LaPrade moves that bail be set in the amount of $15,000.00 cash bail and that a retainer be placed on Defendant Campanile.
Sept. 27	Ordered: Motion granted.
Sept. 27	Ordered: that J. William O'Brien, Esq. be appointed as counsel for Defendant.
Sept. 27	Filed Appointment of J. William O'Brien,Esq. for Defendant Campanile.
Oct. 5	Filed Appearance Bond with Power of Attorney attached as to Defendant Monks. Received from Clerk, Dist. of New Jersey.
Oct. 9	Filed Warrant for Arrest of Defendant William Monks returned Served.
Nov. 13	In Court before Judge Holden, Defendant Monks present with his attorneys, Robert DeGroot, Esq., John Burgess, Esq. entered his appearance of Burgess & Kilmurry, Esqs. for Defendant Monks For Arraingment.
Nov. 13	Court makes inquiries of Defendant Monks before plea.
Nov. 13	Defendant Monks waives reading of Indictment and enters a plea of not guilty to all charges.
Nov. 13	Mr. Gray moves that bail as to Defendant Monks be continued in the amount of $25,000.00.
Nov. 13	Ordered: Bail continued in the amount of $25,000.00.
Nov. 13	Mr. DeGroot moves for thirty days in which to file pre-trial motions, concluded in by Mr. Burgess; not opposed by Mr. Gray.
Nov. 13	Ordered: Case scheduled for hearing on pre-trial motions on December 10, 1973 at Rutland, Vermont.
Nov. 30	Filed Defendant Monks' Notice of Motions 1) Severance; 2) Transfer of Vicinage; 3) Discovery Inspection and Answers to A Bill of Particulars; 4) Suppression of Evidence; 5) Motion to Permit Filing of these Motions Nunc Pro Tunc.
Nov. 30	Defendant Monks' Affidavit.

1973	
Dec. 12	Filed Brief in support of Motions for (1) trial severance under Rule 8 (b) and 14 of the FROP: (2) transfer of vicinage; (3) discovery and inspection and answers to a bill of particulars; (4) suppression of evidence, as to Defendant Monks.
1974	
Feb. 22	Filed Government's Notice of Readiness for trial.
Feb. 28	Filed Government's response to motions of Defendant Monks and Memorandum of points and authorities.
Mar. 4	Filed Appendix A to Government's Memorandum.
Mar. 18	In open Court before Judge Coffrin, Mr. O'Brien for Defendant Campanile joins in Defendant Monks' motions, consented to by Mr. O'Neill for Government, J. William O'Brien, Esq. for Defendant Campanile; Robert DeGroot, Esq. and John Kilmurry, Esq. for Defendant Monks; Jerome O'Neill, Esq. for Government.
Mar. 18	Parties agree that filing of motions be nunc pro tunc.
Mar. 18	Hearing on motion for discovery and inspection and answers to a bill of particulars.
Mar. 18	Parties to prepare Order by March 25, 1974.
Mar. 18	Mr. DeGroot withdraws motion for transfer of vicinage.
Mar. 18	With respect to Defendant Monks' motions for severance.
Mar. 18	Counsel stand on their briefs.
Mar. 18	With respect to motion for suppression of evidence, parties have one week to file briefs.
Mar. 25	Filed the following papers received from Clerk, District of New Jersey; Temporary Commitment of William Monks and Affidavit.
Apr. 1	In open Court before Judge Coffrin, Defendant Campanile present with his Attorney: J. William O'Brien, Defendant Monks present with his Attorney: John Kilmurry, Jerome O'Neill present for Government.
Apr. 1	Hearing on Defendants' Motion for Suppression of Evidence.
Apr. 1	Statements made to Court by Mr. O'Neill and by Mr. Kilmurry.
Apr. 1	Richard Heon, sworn by Clerk, was examined by Mr. O'Neill; cross-examined by Mr. Kilmurry; re-examined by Mr. O'Neill.
Apr. 1	William Monks, sworn by Clerk, was examined by Mr. Kilmurry; cross-examined by Mr. O'Neill.
Apr. 1	Decision reserved.
Apr. 1	Ordered: Counsel for Defendants have to 4-3-74 to file any Memorandum and Government has to 4-8-74 to respond.
Apr. 4	Filed Supplemental memorandum of law in support of motion to supress, as to Defendant Monks.
Apr. 4	Filed Defendant Monks' motion for discovery and inspection.

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Apr. 8 Filed Order -- Motions of Defendant Monks for severance and transfer of vicinage filed 11/30/73 in which Defendant Campanile joined at the time of hearing on 3/18/74 are denied. Copy mailed to attorneys.

Apr. 9 Filed Government's response to motion for discovery and inspection by Defendant Monks.

Apr. 9 Filed Government's Subpoena to Testify returned served.

Apr. 9 Filed Government's opposition to motion to suppress of Defendant Monks.

Apr. 9 Filed Government's memorandum of points and authorities in opposition to motion to suppress.

Apr. 11 Filed Subpoena to Testify returned served.

Apr. 11 Filed Subpoena to Testify returned served.

Apr. 11 Filed Subpoena to Testify returned served.

Apr. 11 Filed Subpoena to Testify returned served.

Apr. 12 Filed 10 Subpoenas to Testify returned served

Apr. 15 Filed Government's subpoena to testify returned served.

Apr. 16 Filed Government's subpoena to testify returned served.

Apr. 16 Filed Government's subpoena to testify returned served.

Apr. 16 Trial by jury begun before Judge Coffrin. Jerome O'Neill, Esq. and David Reed, Esq. for Government; J. William O'Brien, Esq. for Defendant Campanile; John Burgess, Esq. for Defendant Monks.

Apr. 16 Jury excused -- Mr. Burgess moves that witnesses be sequestered from Courtroom prior to testifying and that witnesses do not discuss testimony with other witnesses after they have testified; Mr. O'Brien joins in Mr. Burgess' motion.

Apr. 16 Ordered: Motion granted.

Apr. 16 Mr. O'Neill moves that Agent list or one other agent be present in the Courtroom.

Apr. 16 Ordered: Motion granted.

Apr. 16 Mr. Burgess moves that a Mr. Frank B. Follett be present in Courtroom when he arrives.

Apr. 16 Ordered: Motion granted.

Apr. 17 Filed Order for production of material witness.

Apr. 17 Filed Affidavit of Richard E. Heon.

Apr. 17 Filed seven (7) subpoenas to testify returned served.

Apr. 19 Filed Government subpoena to testify returned served.

Apr. 22 Filed Government subpoena to testify returned unserved.

Apr. 22 Filed Government's trial memorandum.

Apr. 23 Filed Government's requests to charge.

Apr. 24 Filed Government's subpoena to testify returned served.

Apr. 25 Filed Government's supplemental requests to charge.

Apr. 25 Filed defendants' jointly requests to charge.

Apr. 26 At 3:15 P.M., the jury come into Court and report a verdict of guilty as to Defendant Campanile on Count I of Indictment; a verdict of guilty as to Defendant Monks on Court I of Indictment; a verdict of guilty as to Defendant Campanile on Court II of Indictment; a verdict

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Apr. 26	of guilty as to Defendant Monks on Court II of Indictment.
Aug. 19	Filed Judgment and Probation/Commitment Order as to Defendant Monks -- Defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of eight years on Court I and eight years on Court II. Sentence on Court II to run concurrent with sentence on Court I and sentence in Criminal No. 74-65 (three years).
Aug. 19	Ordered: that Richard Blum, Esq. be appointed for Defenda Monks as counsel for purposes of appeal.
Aug. 19	Filed Judgment and Probation/Commitment Order -- Defendant Campanile is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of eight years on Court I and eight years on Court II. Sentence on Court II to run concurrent with sentence on Court I.
Aug. 27	Filed Defendant Monks' Notice of Appeal. Mailed copy to Richard C. Blum, Esq., Hon. George W. F. Cook, Robert DeGroot, Esq., John Burgess, Esq., J. William O'Brien, Esq., Judge Coffrin, Court Reporter and Clerk, U. S. Court of Appeals for the Second Circuit.
Aug. 27	Filed Order allowing Defendant to proceed on appeal in forma pauperis.
Aug. 28	Filed Defendant Campanile's Motion to Proceed in Forma Pauperis.
Aug. 28	Filed Defendant Campanile's Notice of Appeal. Mailed Copy to Hon. A. Daniel Fusaro, Clerk, U. S. Court of Appeals, Hon. Albert J. Coffrin, Mr. Francis A. Cumming, Court Reporter, U. S. Attorney and J. William O'Brien, Esq.
Oct. 4	Mailed Record on Appeal to Clerk, U. S. Court of Appeals for the Second Circuit, New York, N. Y. Attys. notified.
Nov. 26	Mailed Supplemental Record on Appeal to Clerk, U. S. Court of Appeals for the Second Circuit. Attys. notified.

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

UNITED STATES OF AMERICA	)	Title 18
	)	United States Code
v.	)	Sections 2113(b) and 2
	)	
ANTHONY THOMAS CAMPANILE and WILLIAM MONKS	)	

COUNT I

The Grand Jury charges:

On or about the 30th day of May, 1973, in the District of Vermont, ANTHONY THOMAS CAMPANILE and WILLIAM MONKS, the defendants, unlawfully, willfully and knowingly did take and carry away, with intent to steal and purloin, property, money and other things of a value of about one thousand three hundred fifty-three dollars and twenty-five cents ($1,353.25) belonging to, and in the care, custody, control, management and possession of the Franklin Bank, Milton, Vermont, the deposits of which were insured by the Federal Deposit Insurance Corporation; in violation of Title 18, United States Code, Sections 2113(b) and 2.

COUNT II

The Grand Jury further charges:

On or about the 30th day of May, 1973, in the District of Vermont, ANTHONY THOMAS CAMPANILE and WILLIAM MONKS, the defendants, unlawfully, willfully and knowingly did take and carry away with intent to steal and purloin, property, money and other things of a value of about eight hundred eighty-seven dollars and ninety-eight cents ($887.98) belonging to and in the care, custody, control, management and possession of the Howard Bank, Enosburg Falls, Vermont, the deposits of which were insured by the Federal Deposit Insurance Corporation; in violation of Title 18, United States Code, Sections 2113(b) and 2.

A TRUE BILL

/s/A. T. Stannard
Foreman

GEORGE W. F. COOK
UNITED STATES ATTORNEY

BY: /s/Carter LaPrade
CARTER LaPRADE
ASST. U. S. ATTORNEY

we want. The Government asks for no more than a fair verdict. If you, in your minds, don't believe these men did it, we don't ask for a verdict of guilty. You will be asked to weigh their guilt and decide whether they are guilty beyond a reasonable doubt. The Government suggest to you it hasn't proved this case beyond a reasonable doubt; it has proved these men beyond any doubt. That is all we ask.

Now when you came in here as jurors, the Government asked you if the Government proved its case, would you return a verdict of guilty. I stress that now and the Government suggests to you now this has been so proved and on that basis requests you to find Anthony Campanile and William Monks guilty of the burglary of both of these banks.

(At 11:10 a.m.)

THE COURT. We will proceed to charge the Jury.

DEPUTY CLERK ATHERTON. The Crier will make proclamation for strict silence while the Court delivers the charge to the Jury.

(The proclamation was duly given by Law Clerk Glenn Jarrett.)

THE COURT. Ladies and Gentlemen of the Jury: I am going to appoint Mr. Deliduka as your foreman.

This is a criminal prosecution brought by the United States against the defendants, Anthony Campanile and William Monks. The grand jury indictment charges the defendant

in two counts as follows:

Count I charges that on or about the 30th day of May, 1973, in the District of Vermont, Anthony Thomas Campanile and William Monks, the defendants, unlawfully, willfully and knowingly did take and carry away, with intent to steal and purloin property, money and other things of a value of about $1,353.25 belonging to, and in the care, custody control, management and possession of the Franklin Bank, Milton, Vermont, the deposits of which were insured by the Federal Deposit Insurance Corporation, in violation of Title 18, United States Code, Sections 2113(b) and 2.

Count II charges that on or about the 30th day of May, 1973, in the District of Vermont, Anthony Thomas Campanile and William Monks, the defendants, unlawfully, willfully and knowingly did take and carry away with intent to steal and purloin property, money and other things of a value of about $887.98 belonging to, and in the care, custody, control, management and possession of the Howard Bank, Enosburg Falls, Vermont, the deposits of which were insured by the Federal Deposit Insurance Corporation, in violation of Title 18, United States Code, Sections 2113(b) and 2.

The defendants have been indicted by the grand jury, but this should in no way influence your verdict. The indictment is nothing more than a formal method of accusing the defendants of a crime preliminary to trial. A grand jury

investigation is necessarily one-sided. The Government presents to the grand jury all evidence favorable to the return of an indictment; whereas, the defendants have no opportunity to present evidence on their behalf. Thus, the indictment is not evidence of any kind against the accused and does not create any presumption or permit any inference of guilt.

The defendants have pleaded not guilty to the charges contained in the indictment. You have been chosen and sworn as jurors in this case to determine the issues of fact presented by the allegations of the indictment, and the denial made by the not guilty pleas of the defendants. You are to perform this duty without bias or prejudice as to any party.

At the outset, I instruct you that the guilt or innocence of each defendant must be determined by you separately and independently of any evidence which applies only to one defendant and not the other, and separately and independently of evidence which has been admitted as to one defendant and excluded as to the other. You should consider the case of each defendant as if he were being tried separately and alone.

You have observed that the defendants did not take the stand to testify in their own behalf. They have a constitutional right not to do so. One of the highest constitutional safeguards in our system of criminal justice is that a defendant is not obliged to testify or to produce evidence

in his own beahlf, and he may not be called as a witness by the prosecution or compelled to give evidence against himself. The exercise by a defendant of his right not to testify raises no presumption of guilt and permits no unfavorable inference of any kind to be drawn. In determining a defendant's guilt or innocence of a crime charged, you are not to consider, in any manner whatsoever, the failure of a defendant to testify as a witness or to produce evidence in his own behalf.

The law presumes a defendant to be innocent of a crime with which he is charged. This presumption of innocence continues throughout the trial down to the time in the jury room, if that time, in fact, arrives, when you are satisfied from all the evidence, beyond a reasonable doubt, that either or both defendants is guilty of the crime charged. The law permits nothing but legal evidence presented before this Jury to be considered in support of the charges against the defendants. So, the presumption of innocence alone is sufficient to acquit the defendants, unless you are satisfied beyond a reasonable doubt of the guilt of either defendant from all the evidence in the case.

You have seen and heard the evidence produced in this trial, and it is the sole province of the Jury to determine the facts of the case. But first, I would like to call to your attention certain guides by which you are to evaluate the evidence.

The burden of proof is on the Government to prove each element of the charges against the defendants beyond a reasonable doubt. You cannot find either defendant guilty unless you determine that the Government has established by the evidence each and every essential element of the crime charged against him beyond a reasonable doubt. However, to support a verdict of guilty, you need not find every fact beyond a reasonable doubt. You need only find that the crime charged has been proven beyond a reasonable doubt from all the evidence in the case.

A reasonable doubt is a fair doubt based upon reason and common sense and arising from the state of the evidence. By proof beyond a reasonable doubt, you are not to understand that all doubt is to be excluded. It is rarely possible to prove anything to an absolute certainty. It must be a substantial doubt such as would make an honest and sensible and fair-minded person hesitate to act in a serious and important matter wherein ascertainment of the truth is conscientiously being sought.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. The law never imposes upon a defendant in a criminal case the burden or duty of producing any evidence and, since the burden is always upon the Government to prove the accused guilty by proving beyond a reasonable doubt every essential element of

the crime charged, a defendant has the right to rely upon a failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross examination of witnesses for the Government.

If, after impartial consideration of all the evidence, you can candidly say that you are not satisfied of the guilt of either defendant beyond a reasonable doubt, you should find that defendant not guilty.

There are two types of evidence which a jury may consider in determining whether or not a defendant is guilty as charged. One is direct evidence, such as the testimony of an eye witness. The other is circumstantial evidence, which consists of proof of a chain of circumstances from which a conclusion regarding essential facts in the case may logically be drawn. Regardless of the nature of the evidence, the law requires that before convicting a defendant, the Jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all of the evidence in the case.

Circumstantial evidence is legal and proper for you to consider, and you may convict upon this class of evidence alone if, thereby, you are persuaded beyond a reasonable doubt of a defendant's guilt. But, the circumstances must be such as will lead the guarded discretion of a just and reasonable man to the conclusion that the crime charged has been committed, and that a defendant is guilty of its commissio

You will recall that counsel in this matter have stipulated or agreed as to certain facts. You must accept such stipulations as evidence and regard the stipulated facts as proved.

Any testimony which has been excluded or which has been stricken from the record is not evidence in the case, and you will entirely disregard it in arriving at your verdict Likewise, the arguments of the attorneys and any statements which they made in their arguments are not evidence and will not be considered by you. You will render your verdict only from the evidence in the case which consists of the sworn testimony of the witnesses, the stipulations of counsel, and all exhibits which have been received in evidence. It is your recollection of the witnesses' testimony and not the attorneys statements as to what that testimony was which shall control you in reaching your decision. But in your consideration of the evidence, you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw from facts, which you find have been proved, such reasonable inferences as are justified in the light of your own experience

If you feel that witnesses differed as to what the facts were, it is generally a safer way to reconcile the conflicting testimony, if you reasonably can, upon the theory that all of the witnesses intended to tell the truth. But if you cannot so reconcile the testimony, then you must determine

from all th evidence before you, which of the witnesses is entitled to greater credit.

The credibility of the witnesses and the weight to be given their testimony are questions entirely for your determination. The law is that you are not bound to give the same weight, the same credit, or have the same faith in the testimony of each witness, but you should give their testimony just such weight, just such credit, and have just such faith in it that you think it is fairly entitled to receive. Consider the appearance of the witnesses on the stand; their candor, or lack of candor; their feelings, or bias, if any; their interest in the result of the trial, and the reasonableness of the testimony they gave, and believe as much or as little of the testimony of each witness as you think you ought to.

A witness is presumed to speak the truth, but if you reach the conclusion that any witness in the case has willfully or deliberately given false testimony about any material fact, you may reject from consideration all of his or her testimony, or you may accept such part as you may deem true and disregard that which you may feel is false.

There has been testimony introduced in this case which we call expert testimony. In this regard, I refer to the testimony of Mr. Saunders, the F.B.I. fingerprint expert, and Professor Naramore, the mathematician. An expert is a person who, by reason of special study, training and

experience as to a given subject, has knowledge concerning that subject superior to other people in general. The value of expert testimony, or opinioned evidence, given by an expert depends upon the honesty and ability of the witness; upon the facts used by him as a basis for his opinion, and upon his opportunity for observation. If the facts used by him for a basis are proved, and his qualifications are high, and he is honest and impartial, and has had ample opportunity to make proper observations and study, his opinion may be of great value; while if his opinion is based upon a state of facts which the evidence does not sustain, or upon a very limited opportunity to make observation, his testimony may be of little value. Expert testimony is to be weighed by you with all other testimony in the case, and the weight of all the expert testimony in this case is for you, and you alone, to determine.

Having in mind the general guidelines that I have just given you, it now becomes the duty of the Court to instruct you as to the law applicable to your determinations in this case. It is your duty, as jurors, to follow the law as stated in these instructions and to apply the rules of law so given to the facts as you find them from the evidence. You will not be justified under your oath as jurymen in finding a verdict contrary to the law as the Court gives it to you.

It is the sole province of the Jury to determin the facts in the case. The Court does not, by any instructions

given to you, intend to persuade you as to how you should decide any question of fact. It is your duty to decide all the facts from the evidence. All parties have a right to expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a just verdict.

The substantive crime charged in Count I of the indictment is contained in Section 2113 of Title 18 of the United States Code. Subsection (b) of that section provides in relevant part as follows:

"Whoever takes and carries away, with intent to steal or purloin any property or money or any other thing of value exceeding $100 belonging to, or in the care, custody, control, management, or possession of any bank shall be guilty of an offense against the laws of the United States."

Section 2113(f) defines the term "bank" to mean any member bank of the Federal Reserve System, and any banking institution organized or operating under the laws of the United States, and any bank, the deposits of which are insured by the Federal Deposit Insurance Corporation.

The bank referred to in Count I is the Frankl Bank in Milton, Vermont. It has been stipulated by the parties that the deposits of this bank were insured by the Federal Deposit Insurance Corporation at the time of the offense in question. Thus, you may accept this element of th

crime as a fact which has been established.

There are three other essential elements to the crime which you must find beyond a reasonable doubt before you can find the defendants, or either of them, guilty as to Count I. These are as follows:

First: The taking and carrying away of property, money or any other thing of value exceeding $100 belonging to, or in the care, custody, control, management, or possession of the Franklin Bank in Milton;

Second: Such taking and carrying away was with an intent to steal and purloin; and

Third: The defendants willfully did the act, or acts, charged.

To establish the first element of the crime, the Government must prove beyond a reasonable doubt that money in the possession of the bank was taken from its custody or control by the defendants, or either of them, and that the money was of more than $100 in value. If you find beyond a reasonable doubt that defendants, or either of them, took and carried away money which belonged to the bank that was in its care, custody, control, management, or possession, you may find that the money had a value of more than $100, as the parties have agreed that the amount taken from the Franklin Bank was in excess of this amount.

The second element of the crime that the

Government must prove beyond a reasonable doubt is that the defendants acted with intent to steal, or, as it is some time called, purloin. The word "steal" has a broad meaning including all takings with a criminal intent to deprive the owner of the rights and benefits of ownership.

The word "purloin" generally means the same as "steal," although it may also involve more of an element of stealth than is the case with the word "steal".

The third element that the Government must prove is that the defendants willfully did the act, or acts, charged. An act is done willfully if done voluntarily and intentionally, and with the specific intent to do something the law forbids; that is, for the purpose to either disobey or disregard the law.

The crime charged in this case is a crime whi requires proof of specific intent before the defendants, or either of them, can be convicted. Specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent, the Government must prove that the defendants, or either of them, knowingly did a act which the law forbids, purposely intending to violate the law. Such intent may be determined from all the facts and circumstances surrounding the case. An act is done knowingly, if done voluntarily and intentionally, and not because of mistake, accident, negligence or other innocent reason.

Knowledge and willfullness of a defendant need not be proved by direct evidence and, indeed it seldom can be. Like any other fact in issue, it can be established by circumstantial evidence. The acts of a person must be set in their time and place. The meaning and significance of a particular act, or conduct, may and usually does depend upon the circumstances surrounding the act or conduct. You should consider the acts and conduct of each defendant and whether such facts, if you believe them, make it likely, or unlikely, probable, or improbable, that he fully and precisely understood what he was doing.

You may not convict the defendants, or either of them, unless you are satisfied that the Government has proven beyond a reasonable doubt the essential elements of the crime.

There has been testimony introduced regarding the burglary of the American Legion Post in Enosburg Falls the night of May 30th or 31st, 1973; the night of May 30th and early morning of May 31st of 1973. The defendants are not accused of any type of crime involving the American Legion Post. However, you may consider that evidence and give it such weight as you believe it is entitled to receive in considering the specific offenses charged in the indictment, and particularly whether it was part of a common scheme or design. Nevertheless, it is not to be considered by you as evidence of the

the commission of a crime, if you find that there was such a flight, is not, of course, sufficient in itself to establish his guilt, but is a fact which, if proved, may be considered by you in the light of all other evidence in the case in determining guilt or innocence. Whether or not evidence of flight shows a consciousness of guilt, and the significance to be attached to any such evidence, are matters exclusively within your province.

If you find beyond a reasonable doubt that either/or both defendants used a name other than his own in order to avoid subsequent identification, that would be a fact from which you may, but need not, infer a consciousness of guilt on his part.

You should bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

The Government, in Count I, has also charged the defendants with violating 18 United States Code, Section 2, which is generally referred to as the aiding and abetting statute. This act provides that whoever commits an offense against the United States or aids, abets, counsels, commands, induces, or procures its commission, is guilty of a crime.

An aider or abettor within the meaning of this act is one who assists the perpetrator of a crime.

There are two essential elements to this

guilt or innocence of the defendants as to the offense charged, and it should be considered by you only if you find beyond a reasonable doubt that the defendants performed the particular act charged in Count I of the indictment.

There was also testimony in the case concerning a possible burglary of a bank in New Jersey in 1972 involving these defendants. Evidence of alleged earlier acts of a nature similar to the offense charged may not be considered for any purpose whatever, unless you first find that the other evidence in the case, standing alone, establishes beyond a reasonable doubt a defendant did the particular act charged in the particular count of the indictment then under deliberation, which in this instance is Count I.

If you should find beyond a reasonable doubt from other evidence in the case that the accused did the act charged in the particular count under deliberation, then you may consider evidence as to an alleged earlier act of a similar nature in determining the state of mind or intent with which the defendant did the act charged in the particular count. Such a similar act, however, is not to be considered by you as having any bearing whatever as to the criminal character of either defendant. The evidence which has been introduced in this regard should be given only such weight you think it deserves in determining the defendants' intent.

The intentional flight of a defendant after

offense; some overt conduct and the intent to violate the law.

With reference to the first element, to aid or abet the perpetrator of a crime requires that a defendant asscciate himself with the illegal venture, that he participate in it as something that he wishes to bring about, and that he seeks by his action to make it succeed. The defendant's mere association with those who committed the crime, or knowledge that the crime was to be committed are not sufficient to establish this offense. You, the Jury, must be convinced beyond a reasonable doubt that the defendant was a participant or a substantial assistant in the commission of the crime, rather than merely a knowledgeable spectator.

With regard to the second element of the aiding and abetting offense, I instruct you that the crime which the defendants are accused of committing is one which requires specific criminal intent, or a culpable purpose, in order to find the defendants guilty.

Thus, if you find that a defendant was a participant or substantially assisted in the taking and carrying away, with intent to steal or purloin any money in the care, custody, control, management or possession of the Franklin Bank, you must then decide beyond a reasonable doubt whether the defendant did so willfully and knowingly in a community unlawful purpose with some other person. An aider or abetto is punishable the same as a principal or the one who actuall

commits the crime and thus, the intent needed to convict the defendant must be the same as would be required to convict the principal.

In other words, an aider or abettor must have the same knowledge and intent required as the principal. Thus, proof of the defendant's knowledge of the taking and carrying away with intent to steal or purloin any money in the care, custody, control, management, or possession of any bank is necessary to convict him.

In order to find the defendants, or either of them, guilty of aiding and abetting in Count I, you must find that they acted willfully and knowingly in aiding and abetting the taking and carrying away with intent to steal or purloin money in the care, custody, control, management, or possession of the Franklin Bank in Milton, Vermont. The same considerations which I discussed earlier regarding willfullness and knowledge apply here.

The Government must, of course, prove each element of the offenses charged in this case; that is, the aiding and abetting count, beyond a reasonable doubt, as well as the other parts of Count I.

Count II of the indictment also charges the defendants with a violation of 18 United States Code, Section 2113(b), but with regard to the burglary of the Howard Bank in Enosburg Falls.

The elements of the crime which the Government must prove beyond a reasonable doubt are:

First: The taking and carrying away of property, money or any other thing of value exceeding $100 belonging to, or in the care, custody, control, management, or possessi of the Howard Bank in Enosburg Falls;

Second: Such taking and carrying away was wi an intent to steal and purpoin;

Third: The defendants willfully did the act, or acts, charged.

These are the same elements discussed in rega to Count I, and you should recall what I said in relation to them there. However, the parties did not stipulate that the deposits of the Howard National Bank were insured by the Federal Deposit Insurance Corporation. Nevertheless, there h been evidence introduced that the Howard Bank in Enosburg Falls is a bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, and from this evidence you may find that the Howard Bank is a bank defined in Subsection (f) of Section 2113, Title 18, United States Code.

The parties have agreed that the money taken from the Howard Bank in Enosburg Falls was in excess of $100. So that if you find beyond a reasonable doubt that the defendants, or either of them, took or carried away money which belonged to the Howard Bank, you may find that it was in excess

of $100.

In your deliberations concerning the offense charged in Count II of the indictment, you should bear in mind what I said about evidence concerning the burglary of the American Legion Post, the testimony concerning the New Jersey bank, about flight, and about use of a false name which I discussed with reference to your deliberations concerning Count I. The instructions concerning these items previously given you apply equally in your consideration of Count II.

The defendants are also charged in Count II of the indictment with a violation of 18 United States Code, Section 2, the aider and abettor statute. You should bear in mind what I said in relation to aiding and abetting when discussing Count I of the indictment. Those instructions pertain equally to the aiding and abetting charge of Count II.

Again, I want to suggest to you that while the law is for the Court, and you are to apply the law as given you in these instructions, the finding of the facts in this case is entirely for you. Whatever reference the Court has made to the evidence or pleadings is only for the purpose of making application of the principles of law to the issues in this case, and without any purpose of indicating in the least degree how the Court may think that the case ought to be decided on the facts. That is for you to determine.

The exhibits which have been admitted into

evidence during the trial are for your consideration in your deliberations and will be present in the jury room with you.

Now counsel for each side have asked that the gun in this matter be taken into the jury room as one of the exhibits. So, obviously, for safety reasons, I ask that you do not handle the gun. You may inspect or look at it, but please don't handle the gun, and be very careful as far as that is concerned.

You will render spearate verdicts as to each defendant on each count. Your verdict as to each defendant on each count must be unanimous and will be delivered orally by your foreman.

(At the bench)

MR. O'NEILL. Your Honor, our only request is not an exception. I was clightly concerned about one aspect of the charge; namely, aiding and abetting. My only concern, it might appear to the Jury aiding and abetting is a separate count from each count of the indictment. Our only request is that the Jury be instructed they can find the defendants guilty if they were the principal, or aided and abetted the commission of the acts charged.

THE COURT. All right.

MR. O'BRIEN. The only objection that Defendant Campanile makes is to that portion of the charge wherein the Jury was instructed they might consider the so-called robbery

THE COURT. Mr. Foreman, we have a note from the Jury that reads as follows: "1. Where did money (coin) rolls come from? 2. Whose initials and why those initials and date? 3. The charges re-read, please."

Now as far as Number 1 is concerned, are you talking about the coin wrappers; that is, Government's Exhibit "1"?

FOREMAN DELIDUKA. That is right.

THE COURT. All right. I think we can agree that these coin wrappers came from the Howard National Bank in Enosburg Falls; that they were delivered by Helen Converse, I think she was one of the first witnesses, after the robbery to Fred List, an F.B.I. Agent, and at the time she delivered them to him as samples, she put her initials on the wrappers for identification and the date.

Now on other exhibits you may also find some initials from time-to-time, and the dates. That is normally only for identification purposes. Would that answer your question? Were you referring to the initials on the coin wrappers in Government's Exhibit "1"?

FOREMAN DELIDUKA. I believe so.

THE COURT. Do you think this answers your inquiry?

FOREMAN DELIDUKA. I believe so. The date, was that the date when those initials were placed on it?

THE COURT. That would be the date those initials were placed on it. As far as the charges, are you referring to the offense with which these gentlemen are charged? In other words, a re-reading of the indictment, is that what you are asking?

FOREMAN DELIDUKA. No.

THE COURT. You are asking for the Court's instructions?

FOREMAN DELIDUKA. That is right.

THE COURT. All right. Do you want the whole thing, or just the part dealing with what I call, more-or-less the legal aspects?

FOREMAN DELIDUKA. The legal aspects.

THE COURT. I might say, if you do desire a copy of the indictment, you can have it with you in the jury room, if you wish to request it.

I am going to read now only the legal aspects of the case and not the general instructions.

The substantive crime charged in Count I of the indictment is contained in Section 2113 of Title 18 of the United States Code. Subsection (b) of that section provides in relevant part as follows:

"Whoever takes and carries away, with intent to steal or purloin any property or money or any other thing of value exceeding $100 belonging to, or in the care, custod

control, management, or possession of any bank shall be guilty of an offense against the laws of the United States."

Section 2113(f) defines the term "bank" to mean any member bank of the Federal Reserve System, and any banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

The bank referred to in Count I is the Franklin Bank in Milton, Vermont. It has been stipulated by the parties that the deposits of this bank were insured by the Federal Deposit Insurance Corporation at the time of the offense in question. Thus, you may accept this element of the crime as a fact which has been established.

There are three other essential elements to the crime which you must find beyond a reasonable doubt before you can find the defendants, or either of them, guilty as to Count I. These are as follows:

First: The taking and carrying away of property, money or any other thing of value exceeding $100 belonging to or in the care, custody, control, management, or possession of the Franklin Bank in Milton;

Second: Such taking and carrying away was with an intent to steal and purloin;

Third: The defendants willfully did the act, or acts, charged.

To establish the first element of the crime, the Government must prove beyond a reasonable doubt that money in the possession of the bank was taken from its custody or control by the defendants, or either of them, and that the money was of more than $100 in value. If you find beyond a reasonable doubt that defendants, or either of them, took and carried away money which belonged to the bank or was in its care, custody, control, management, or possession, you may find that the money had a value of more than $100, as the parties have agreed that the amount taken from the Franklin Bank was in excesss of this amount.

The second element of the crime that the Government must prove beyond a reasonable doubt is that the defendants acted with intent to steal, or, as it is some times called, purloin. The word "steal" has a broad meaning including all takings with a criminal intent to deprive the owner of the rights and benefits of ownership.

The word "purloin" generally means the same as "steal," although it may also involve more of an element of stealth than is the case with the word "steal".

The third element that the Government must prove is that the defendants willfully did the act, or acts, charged. An act is done willfully if done voluntarily and intentionally and with the specific intent to do something the law forbids; that is, with the purpose to either disobey or

disregard the law.

The crime charged in this case is a crime which requires proof of specific intent before the defendants, or either of them, can be convicted. Specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent, the Government must prove that the defendants, or either of them, knowingly did an act which the law forbids, purposely intending to violate the law. Such intent may be determined from all the facts and circumstances surrounding the case. An act is done knowingly if done voluntarily and intentionally, and not because of mistake, accident, negligence or other innocent reason.

Knowledge and willfullness of a defendant need not be proved by direct evidence and indeed it seldom can be. Like any other fact in issue, it can be established by circumstantial evidence. The acts of a person must be set in their time and place. The meaning and significance of a particular act or conduct may and usually does depend upon the circumstances surrounding the act or conduct. You should consider the acts and conduct of each defendant and whether such facts, if you believe them, make it likely, or unlikely, probable, or improbable that he fully and precisely understood what he was doing.

You may not convict the defendants, or either of them, unless you are satisfied that the Government has

proven beyond a reasonable doubt the essential elements of the crime.

Do you wish me to continue?

FOREMAN DELIDUKA. Is it possible to have a copy of this, your Honor?

THE COURT. No, I am sorry.

FOREMAN DELIDUKA. Please continue.

THE COURT. There has been testimony introduced regarding the burglary of the American Legion Post in Elosburg Falls the night of May 30th-31st, 1973.

The defendants are not accused of any type of crime involving the American Legion Post. However, you may consider this evidence and give it such weight as you believe it is entitled to receive in considering the specific offenses charged in the indictment, and particularly whether it was part of a common scheme or design. Nevertheless, it is not to be considered by you as evidence of the guilt or innocence of the defendants as to the offense charged, and it should be considered by you only if you find beyond a reasonable doubt that the defendants performed the particular acts charged in Count I of the indictment.

There was also testimony in the case concerning a possible burglary of a bank in New Jersey in 1972 involving these defendants.

Evidence of alleged earlier acts of a similar

nature to the offense charged may not be considered for any purpose whatever, unless you first find that the other evidence in the case, standing alone, establishes beyond a reasonable doubt that a defendant did the particular act charged in the particular count of the indictment then under deliberation, which in this instance is Count I.

If you should find b eyond a reasonable doubt from other evidence in the case that the accused did the act charged in the particular count under deliberation, then you may consider evidence as to an alleged earlier act of a similar nature in determining the state of mind or intent with which the defendant did the act charged in the particular count. Such a similar act, however, is not to be considered by you as having any bearing whatever as to the criminal character of either defendant. The evidence which has been introduced in this regard should be given only such weight you think it deserves in determining the defendants' guilt.

The intentional flight of a defendant after the commission of a crime, if you find that there was such a flight, is not, of course, sufficient in itself to establish his guilt, but is a fact which, if proved, may be considered by you in the light of all other evidence in the case in determining guilt or innocence. Whether or not evidence of flight shows a consciousness of guilt, and the significance to be attached to any such evidence, are matters exclusively

within your province.

If you find beyond a reasonable doubt that either/or both defendants used a name other than his own in order to avoid subsequent identification, that would be a fact from which you may, but need not, infer a consciousness of guilt on his part.

You should bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

The Government, in Count I, has also charged the defendants with violating 18 United States Code, Section 2, which is generally referred to as the aiding and abetting statute. This act provides that whoever commits an offense against the United States or aids, abets, counsels, commands, induces, or procures its commission is guilty of a crime.

An aider or abettor within the meaning of this act is one who assists the perpetrator of a crime.

There are two essential elements to this offense; some overt conduct and the intent to violate the law.

With reference to the first element, to aid or abet the perpetrator of a crime requires that a defendant associate himself with the illegal venture, that he participat in it as something that he wishes to bring about, and that he seeks by his action to make it succeed. The defendant's mere association with those who committed the crime or knowledge

that the crime was to be committed are not sufficient to establish this offense. You, the Jury, must be convinced beyond a reasonable doubt that the defendant was a participant or a substantial assistant in the commission of the crime rather than merely a knowledgeable spectator.

With regard to the second element of the aiding and abetting offense, I instruct you that the crime which t defendants are accused of committing is one which requires specific criminal intent or a culpable purpose in order to find the defendants guilty.

Thus, if you find that a defendant was a participant or substantially assisted in the taking and carrying away with intent to steal or purloin any money in the care, custody, control, management, or possession of the Franklin Bank, you must then decide beyond a reasonable doubt whether the defendant did so willfully and knowingly in a community of unlawful purpose with some other person. An aider or abettor is punishable the same as a principal or one who actually commits the crime, and, thus, the intent needed to convict the defendant must be the same as would be required to convict the principal.

In other words, an aider and abettor must hav the same knowledge and intent required as the principal. Thu proof of the defendant's knowledge of the taking and carrying away with intent to steal or purloin any money in the care,

custody, control, management, or possession of any bank is necessary to convict him.

In order to find the defendants, or either of them, guilty of aiding and abetting in Count I, you must find that they acted willfully and knowingly in aiding and abetting the taking and carrying away with intent to steal or purloin money in the care, custody, control, management, or possession of the Franklin Bank in Milton, Vermont. The same considerations which I discussed earlier regarding willfullness and knowledge apply here. The Government must, of course, prove each element of the offenses charged in this count beyond a reasonable doubt.

Count II of the indictment also charges the defendants with a violation of 18 United States Code, Section 2113(b), but with regard to the burglary of the Howard Bank in Enosburg Falls.

The elements of the crime which the Government must prove beyond a reasonable doubt are:

1. The taking and carrying away of property, money, or any other thing of value exceeding $100 belonging to, or in the care, custody, control, management, or possession of the Howard Bank in Enosburg Falls;

2. Such taking and carrying away was with an intent to steal and purloin;

3. The defendants willfully did the act, or

acts, charged.

These are the same elements discussed in regard to Count I, and you should recall what I said in relation to them there. However, the parties did not stipulate that the deposits of the Howard National Bank were insured by the Federal Deposit Insurance Corporation. Nevertheless, there has been evidence introduced that the Howard Bank in Enosburg Falls is a bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, and from this evidence you may find that the Howard Bank is a bank defined in Subsection (f) of Section 2113, Title 18 United States Code.

The parties have agreed that the money taken from the Howard Bank in Enosburg Falls was in excess of $100. So that if you find beyond a reasonable doubt that the defendants, or either of them, took or carried away money which belonged to the Howard Bank, you may find that it was in excess of $100.

In your deliberations concerning the offense charged in Count II of the indictment, you should bear in mind what I said about evidence concerning the burglary of the American Legion Post, the testimony concerning the New Jersey bank, about flight, and about use of a false name which I discussed with reference to your deliberations concerning Count I. The instructions concerning these items previously given you apply equally in your consideration of Count II.

The defendants are also charged in Count II of the indictment with a violation of 18 United States Code, Section 2, the aider and abettor statute. You should bear in mind what I said in relation to aiding and abetting when discussing Count I of the indictment. Those instructions pertain equally to the aiding and abetting charge of Count II.

That, Ladies and Gentlemen, concludes the so-called law portion of the charge. So if there is nothing further at this time, we'll let you return to your deliberations.

FOREMAN DELIDUKA. We would like a copy of the indictment please.

THE COURT. We'll see one is taken into the jury room.

(Jury retired at 2:50 p.m.)

(Jury returns at 3:12 p.m.)

THE COURT. Madam Clerk.

DEPUTY CLERK ATHERTON. Mr. Foreman, has the Jury reached a verdict?

FOREMAN DELIDUKA. Yes.

DEPUTY CLERK ATHERTON. What is the verdict as to Defendant Campanile on Count I of the indictment?

FOREMAN DELIDUKA. Guilty.

DEPUTY CLERK ATHERTON. What is the verdict as to Defendant Monks on Count I of the indictment?

THE COURT. I recall when we took our afternoon recess there was no cross examination by the defendants of Mr. Malvin, so you may proceed, Mr. O'Neill.

SHIRLEY BROWN, Sworn

DIRECT EXAMINATION

Q (By Mr. Reed) State your name for the record.

A. Shirley Brown.

Q Where do you live now?

A. 888 Main Street, Paterson, New Jersey.

Q Do you know the Defendant William Monks?

A. Yes, I do.

Q When did you first meet the Defendant William Monks?

A. In June of 1972.

Q Did you date him under social circumstances?

A. Yes, I did.

Q Addressing your attention to early August, 1972, did you take a trip out to west rural New Jersey with Mr. Monks?

A. Yes, sir.

Q And, during this trip did you have occasion to pass a bank?

A. Yes, sir.

Q Where was this bank located?

A. In West Milford, New Jersey, Sussex County.

Q Did Mr. Monks make reference to this bank?

A. Yes, he did.

Q What did he say?

MR. BURGESS. We object.

THE COURT. We'll note your objection and take the answer.

Q (By Mr. Reed) What did he say?

A. He said, "There is my bank," and I said, "Well, why do you come all the way out here for a savings account," and he said, "It is not to put money, it is to take out".

Q Did you ask him what he meant by that?

A. Yes, I did.

Q What did he go on to say?

MR. BURGESS. Our objection runs to the entire line.

THE COURT. Yes.

Q (By Mr. Reed) What did he say?

A. He went on to tell me this bank was going to be burglarized by him and a person, Anthony Campanile, and a third party of Ed, who I don't know. I just heard the name.

Q Mrs. Brown, did he go into some of the details of how he would burglarize the bank?

A. Yes, sir.

Q Was there mention of police cars and surveillance?

A. Yes.

Q What did he say?

A. He said the persons involved always had this one police

car in that area, and they knew where it was at all times at certain times, and there was a certain road that goes around the bank in the back of this bank, or woods, and this is where they would stay for three days.

Q And this bank, again to backtrack, is located in a rural area in New Jersey?

A. Yes.

Q Upon return back to the more metropolitan area near your home, was there further mention of this potential burglary when you returned home that night?

A. Yes, there was, when we returned to my mother's home.

Q Later, did Mr. Monks say or do anything concerning the potential burglary?

A. I have a blonde wig and he had picked this up off my dresser and had placed it on his head and asked me if he could use it, and I told him, "No," and I took it and put it away.

Q Did he tell you what he wanted to use it for?

A. Yes.

Q For what?

A. This way he said he would not be identified. They would be looking for a blonde haired person with longer hair.

Q Was there mention of coveralls or farm shirts?

A. He asked me if my father had an old pair of pants and

a shirt, and I said, "No".

Q And, under those given conditions, did you sever your relationship with Mr. Monks?

A. Yes, sir.

MR. REED. That is all we have.

CROSS EXAMINATION

Q (By Mr. O'Brien) All you know about the activities of Defendant Campanile is what Mr. Monks told you, is that correct?

A. Yes.

Q You have no knowledge, no personal knowledge as to whether or not the Defendant Campanile had actually intended to perpetrate the so-called burglary?

A. Other than Mr. Monks speaking to Mr. Campanile on the phone.

Q That is not my question.

MR. O'BRIEN. I move it be stricken, your Hono

THE COURT. All right, the answer can be stricken. Just answer it "Yes" or "No". Repeat the question, please.

(The reporter read the pending question)

A. No, sir.

MR. O'BRIEN. That is all.

THE COURT. Mr. Burgess?

CROSS EXAMINATION

and at this time the defendants are prepared to stipulate that it may be, without further proof, considered as a matter of fact as follows:

First, that on or about the 30th of May, 1973, in the District of Vermont, some person, or persons, took and carried away money and other things of value of about $1,353.25 which at that time and place belonged to and was in the care of, custody, control or management and possession of the Franklin Bank at Milton, Vermont. By that stipulation, my client and Mr. O'Brien's client in no way stipulate they are in any way connected with the evidence, but stipulate the facts, without further evidence may be considered as proof.

As to Count 2, I am authorized on behalf of my client and Mr. O'Brien and his client to stipulate that without further proof it may be taken as a proven fact that on or about the 30th of May, 1973 in the District of Vermont, some person, or persons, did take and carry away with intent to steal money and other things of a value of about $887.98 which then belonged to, and was in the care, custody, control, management and possession of the Howard Bank of Enosburg Falls, Vermont. By so stipulating, my client and Mr. O'Brien's client in no way stipulate that they were connected with those facts, but without further proof we are stipulating that those facts did occur.

THE COURT. All right, we'll note your stipulation, and ladies and gentlemen, to the extent of the stipula-

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

WILLIAM MONKS and
ANTHONY THOMAS CAMPANILE,
Appellants

vs.

UNITED STATES OF AMERICA,
Appellee

Docket Nos. 74-2160
74-2320

CERTIFICATE OF SERVICE

I, J. William O'Brien, Attorney for Anthony Thomas Campanile, do hereby certify that I have served the enclosed Brief and Appendix upon United States of America by mailing copies thereof unto Jerome F. O'Neill, Assistant United States Attorney for the District of Vermont, at Federal Building, West Street, Rutland, Vermont, 05701, and upon Co-defendant, William Monks, by delivering copies thereof unto his Attorney of Record, Richard C. Blum, 112 Church Street, Burlington, Vermont, 05401.

Dated at Burlington, County of Chittenden and State of Vermont this 27th day of January, 1975.

J. William O'Brien
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Anthony Thomas Campanile
147 Main Street
Burlington, Vermont 05401